

APR 08 2010

PATENT

ATTORNEY DOCKET NO. 01-1041

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/982,709 Confirmation No.: 8648
Applicant: Andrew C. Gilbert, et al.
Title: SYSTEMS AND METHODS FOR QUOTING A TWO-SIDED MARKET
Filed: October 18, 2001
Art Unit: 3685
Examiner: John M. Winter

Atty. Docket: 01-1041
Customer No. 63710

Appeal No. 2009-013992

REQUEST TO REDOCKET PURSUANT TO 37 C.F.R. § 41.39(B)(1)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Pursuant to 37 C.F.R. § 41.39(b)(1) and § 1.111, Applicant hereby requests that this application be removed from the Board's docket and remanded to the examiner.

On April 24, 2009, Applicant amended under 37 C.F.R. § 41.39(b)(1). (The third Examiner's Answer of February 24, 2009 included a "new ground of rejection;" Applicant's procedural rights should not be attenuated by a failure to "designate" the new ground.) Prosecution should have been reopened, and the application withdrawn from appeal.

On June 9, 2009, the Board sent a suggestion to the Examiner, that "the application is not ready for docketing as an appeal." The Board's paper does not identify a precise issue, and does not direct the Examiner's attention to any law or fact warranting the Examiner's attention. Rather, the Board's paper leaves the Examiner to guess.

On July 20, 2009, the Examiner issued an advisory action. Because the Board's suggestion did not communicate clearly, unsurprisingly the Examiner's advisory action does not consider the correct procedural disposition under 37 C.F.R. § 41.39(b)(1).

In a telephone interview between Applicant's attorney and the Examiner in late February 2010, it was agreed that the application should be returned to examination.

On April 10, 2010, Applicant checked PAIR, and the status remains "On Appeal -- Awaiting Decision by the Board of Appeals"

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The application should be returned to the Examiner, with instructions to reopen.
Examination should commence based on the amendment filed April 24, 2009.

The Board is admonished that its intra-PTO communications must clearly communicate issues and identify relevant facts to examiners so that they have a fair chance to move applications forward under the law, just as examiners' papers to applicants must clearly communicate so that applicants can do the same. The Board's June 2009 paper should, at the very least, have mentioned § 41.39(b)(1).

The PTO had no valid OMB control number for any appeal-related information collection before December 22, 2009. The PTO may not impose any penalty against Applicant for any issue arising out of the above. 44 U.S.C. § 3512; 5 C.F.R. § 1320.6.

Applicant hereby authorizes the USPTO to communicate with any authorized representative concerning this application by electronic mail.

Applicant requests that the application be passed to issue in due course. The Examiner is urged to telephone Applicant's undersigned counsel at the number noted below if it will advance the prosecution of this application, or with any suggestion to resolve any condition that would impede allowance. Kindly charge any additional fee, or credit any surplus, to Deposit Account No. 50-3938, Order No. 01-1041.

Respectfully submitted,
BGC PARTNERS, INC.

Dated: April 8, 2010

By: /David E. Boundy/
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